BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

VERNICA WALKER)
Claimant	
VS.	
) Docket No. 258,049
KSQ, INC.)
Respondent)
AND)
)
CONTINENTAL NATIONAL AMERICAN GR	OUP)
Insurance Carrier)

<u>ORDER</u>

Respondent and its insurance carrier appealed the September 14, 2000 preliminary hearing Order entered by Administrative Law Judge John D. Clark.

ISSUES

This is a claim for a back injury that allegedly resulted from a fall at work on approximately May 12, 2000, and from daily work activities thereafter until claimant was laid off on approximately June 13, 2000. After conducting a preliminary hearing, Judge Clark found that on or about May 11, 2000, claimant injured her back while working for respondent. The Judge also found that respondent had timely notice of the accident as respondent knew of the incident on the day it occurred.

Respondent and its insurance carrier contend Judge Clark erred. They argue that claimant failed to prove that she fell and injured her back at work. They also argue that claimant failed to prove that she provided respondent with timely notice of the accident.

The only issues before the Appeals Board on this review are:

- 1. Did claimant fall and injure her back on or about May 12, 2000, while working for respondent?
- 2. If so, did claimant provide respondent with timely notice of that accident or injury?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date, the Appeals Board finds:

- 1. The preliminary hearing Order should be affirmed.
- 2. The Appeals Board affirms the Judge's finding that claimant fell at work and injured her back. The Appeals Board finds that the accident occurred on approximately May 12, 2000. The Board also affirms the Judge's finding that claimant told her supervisor about the accident on the day it occurred. Claimant testified that she believed a black plastic strap tripped her as she turned to walk away after breaking down a box. According to claimant, at least one coworker saw her lying on the floor immediately after the fall. Further, according to claimant, she spoke with two coworkers and her supervisor shortly after the incident. The Appeals Board finds claimant's testimony credible and persuasive, as did the Judge.
- 3. Workers have the burden of proof to establish their right to compensation and to prove the various conditions upon which that right depends.¹
- 4. "Burden of proof" means the burden to persuade by a preponderance of the credible evidence that a party's position on an issue is more probably true than not when considering the whole record.²
- 5. Because claimant has proven that she injured herself while working for respondent and that she gave respondent timely notice of that accident, the request for preliminary hearing benefits should be granted.
- 6. As provided by the Workers Compensation Act, preliminary hearing findings are not binding but subject to modification upon a full hearing of the claim.³

WHEREFORE, the Appeals Board affirms the September 14, 2000 preliminary hearing Order entered by Judge Clark.

IT IS SO ORDERED.

¹ K.S.A. 1999 Supp. 44-501(a).

² K.S.A. 1999 Supp. 44-508(g).

³ K.S.A. 1999 Supp. 44-534a(a)(2).

Dated this	day of November 2000.		
	BOARD MEMB	ER	

c: Joseph Seiwert, Wichita, KS
D. Steven Marsh, Wichita, KS
John D. Clark, Administrative Law Judge
Philip S. Harness, Director